IN THE

Supreme Court of the United States,

OCTOBER TERM, 1903.

LOREN M. HEWITT, as Trustee in Bankruptcy of CLARA E. KELLOGG, *Appellant*, vs. THE BERLIN MACHINE WORKS, *Appellee*.	No. 228.

BRIEF FOR APPELLEE.

Statement of the Case.

This is an appeal (Record p. 39) from a decree of the United States Circuit Court of Appeals for the Second Circuit, (R. p. 38) affirming an order of the District Court of the United States for the Western District of New York (R. pp. 34, 35, 36), sustaining the claim of The Berlin Machine Works (R. pp. 9, 10, 11, 12), appellee herein, to certain machines, viz., two moulders theretofore sold and delivered by said appellee to Clara E. Kellogg, the above named bankrupt, under a conditional bill of sale, (R. pp. 25, 26), and reversing the order of the Referee in Bankruptcy made in pursuance of his opinion,(R. pp. 13, 14, 15, 16), denying the prayer of the petition of the Berlin Machine Works, that said moulders be declared to be the property of said The Berlin Machine Works, and that it be awarded the possession of the same.

FACTS.

In October, 1900, Clara E. Kellogg, resided an
was engaged in business at Canisteo, N. Y., i
operating a sash and blind plant, which she owne
at that place. (R. p. 18.)

The Berlin Machine Works was a corporatio
organized under the laws of the State of New York
having its main office at Beloit, Wisconsin, (R. pp
9, 10) engaged in the business of manufacturin
machinery.

On the 10th day of October, 1900, said Clar
E. Kellogg signed and delivered to a sales agen
of The Berlin Machine Works a written order fo
two moulders to be shipped to her as soon a
possible, for which she was to pay $1850.00 with
in four months after date of shipment, and whic
order provided that title to the machines mentione
should remain in The Berlin Machine Works unti
the machines were fully paid for in cash. (R. pp
25, 26.)

This order was accepted by The Berlin Machin
Works, October 19th, 1900, and the machines wer
thereafter shipped, pursuant to said order, one o
the 29th of October, 1900, and the other on th
16th of November, 1900, and were received b
Miss Kellogg at Canisteo, N. Y., and placed in he
plant and set in operation. (R. p. 18.)

On October 29th, 1900, when the first moulde
was shipped to Miss Kellogg, she made an
delivered to The Berlin Machine Works a promis
sory note for $925.00, the price of such machine
payable four months after date, in which note i

was stated that "title and right of possession of "the property for which this note is given "remains in The Berlin Machine Works until "fully paid for".

On November 16th, 1900, when the second machine was shipped, Miss. Kellogg gave a similar note for $925.00, the price of such machine, payable in four months after date, containing the same statement as to title as appeared in the first note. (R. p. 19).

Neither of said notes, nor any part of the purchase price of said machines was ever paid. (R. p. 19.)

On the 29th day of January, 1901, said Clara E. Kellogg, with intent to hinder, delay and defraud her creditors, transferred her said sash and blind plant, containing said moulders, to the C. E. Kellogg Company, a corporation organized for the purpose of taking over said property and of hindering and delaying the creditors of said Clara E. Kellogg and which Company knew of the fraudulent purpose of said Clara E. Kellogg in making such transfer and received such transfer of her property with like purpose. (R. p. 22.)

That on the first day of March, 1901, said Clara E. Kellogg was adjudged a bankrupt by the District Court of the United States for the Western District of New York, and on the 22nd day of March, 1901, Loren M Hewit, appellant herein, was chosen as trustee of the bankrupt's estate by the creditors of said bankrupt, and duly qualified and entered upon the discharge of his duties as such. (R. p. 18.)

That thereupon said trustee demanded of the C. E. Kellogg Company a reconveyance of the property transferred to it by said bankrupt, and afterwards began an action in the Supreme Court of the State of New York against said Clara E. Kellogg Company for the purpose of setting aside all transfers made by said Clara E. Kellogg to said C. E. Kellogg Company on the ground that said transfer was made with intent to hinder, delay and defraud the creditors of said Clara E. Kellogg.

Thereupon, said C. E. Kellogg Company did, under resolutions of its stockholders and directors, make reconveyance to said Loren M. Hewit as Trustee in Bankruptcy of said Clara E. Kellogg of the property so transferred to it by said Clara E. Kellogg, said Trustee claiming at the time of such reconveyance that the prior transfer by Clara E. Kellogg to said C. E. Kellogg Company had been made to hinder, delay and defraud the creditors of said Clara E. Kellogg. (R. p. 22, 23.)

Said Trustee thereby came into possession of said sash and blind plant, including said moulders so sold and delivered by The Berlin Machine Works, which machines were attached to the floor of the building in which they were located by screws, and could be removed therefrom without injury to the building. (R. pp. 20, 21.)

The Berlin Machine Works demanded said machines of said Trustee, who refused to deliver them or to permit said Berlin Machine Works to obtain the same, and on the 4th day of May, 1901, notified said Berlin Machine Works by letter that

he could not recognize its title to said machines. (R. p. 20.)

On the 16th day of May, 1901, a copy of the order of said Clara E. Kellogg for said machines, dated October 10, 1900, and of the acceptance thereof by said Berlin Machine Works, was filed in the office of the Town Clerk of the Town of Canisteo, N. Y., where said Clara E. Kellogg resided.

Thereafter said Berlin Machine Works filed its petition, verified May 31st, 1901, with the Referee in Bankruptcy, praying for a return of said moulders to it, and for such other relief as might be proper. (R. pp. 9, 10, 11, 12.)

The Referee, after taking testimony and hearing the parties in interest, decided against the claim of said Berlin Machine Works, holding it had lost the legal title to said moulders. (R. p. 16.)

The Berlin Machine Works brought this decision of the Referee before the District Court of the United States for the Western District of New York for review, which court reversed the order of the Referee and held that said Berlin Machine Works had valid title to said machines, and ordered the Trustee to deliver the moulders to the Berlin Machine Works; or, in the event that said machinery had been, that the Trustee pay to the Berlin Machine Works the sum of Twelve hundred dollars, which sum said court determined to be the value of said machines. (R. p. 35, 36.)

From this order the Trustee appealed to the United States Court of Appeals for the Second Circuit, where the order of the District Court was

affirmed, and said Trustee has now appealed from such order of affirmance to this court.

POINTS.

I.

At common law a vendor of chattels may lawfully make it a condition of his sale that title to the property shall remain in him until the purchase price is fully paid, and under such a conditional sale, title will not pass to the vendee until the condition be fulfilled.

2nd Kent, 12th Ed., 498.
Benjamin on Sales, Sec. 320.
Ballard vs. *Burgett*, 40 N. Y., 314.
Cole vs. *Mann*, 62 N. Y., 1.
Boon vs. *Moss*, 70 N. Y., 465, 473.
Graves Elevator Co. vs. *Callanan*, 11 App. Div., 301.
Davison vs. *Davis*, 125 U. S., 90.

II.

The common law in respect to conditional sales has been somewhat modified by Statute in many of the States, without, however, any uniformity of legislation on the subject.

The Statute of the State of New York in force in 1900 and 1901, in respect to conditional sales, being Section 112 of Chapter 418 of the Laws of 1897, is as follows:—

"CONDITIONS AND RESERVATIONS IN CON-
"TRACTS FOR SALE OF GOODS AND CHATTELS.—

"Except as otherwise provided in this article, "all conditions and reservations in a contract "for the conditional sale of goods and chattels, "accompanied by immediate delivery and con- "tinued possession of the thing contracted to be "sold, to the effect that the ownership of such "goods and chattels is to remain in the con- "ditional vendor or in a person other than the "conditional vendee, until they are paid for, or "until the occurrence of a future event or con- "tingency shall be void as against subsequent "purchasers, pledgees or mortgagees in good "faith, and as to them the sale shall be deemed "absolute, unless such contract of sale, contain- "ing such conditions and reservations, or a "true copy thereof be filed as directed in this "article."

The Statute of Connecticut provides:—

"All conditional sales of personal property "which shall not be made in conformity with "the provisions of the preceding Section (as to "filing, etc.,) *shall be held to be absolute sales, "except as between the vendor and vendee, or "their personal representatives.*"

The Statute of Iowa provides:—

"No sale of personal property where the "vendor retains actual possession thereof is "valid *against existing creditors*, or subsequent "purchasers without notice, unless a written "instrument conveying the same is executed, "acknowledged and filed for record with the "recorder of the county where the holder of the "property resides."

These varying Statutes account for varying decisions in different jurisdictions in respect to the validity of conditional sales. For instance, in re *Yukon Woolen Co.*, 2 Am. Bankruptcy Reports, 804, having arisen in Connecticut, was probably well decided under the Connecticut Statute, but could not be supported under the Statute of New York.

And so with *Matter of Kindt*, 2 National Bankruptcy News and Reports, 369, which arose in Iowa.

III.

Statutes changing the common law must be strictly construed, and the common law must be held no further abrogated than the clear import of the language used in the Statute absolutely requires.

Fitzgerald vs. *Quann*, 109 N. Y., 441, Opinion by PECKHAM, J.

IV.

The contract between The Berlin Machine Works and Clara E. Kellogg, that title to the moulders ordered by and delivered to her shall remain in The Berlin Machine Works until fully paid for, is valid.

It will be observed that under the Statute of the State of New York conditions like the one in question in a contract for the conditional sale of chattels accompanied by immediate delivery and continued change of possession shall be void *only* as

against "*subsequent purchasers, pledgees or mort-*
"*gagees in good faith,*" and *as to them*, the sale shall be deemed absolute, unless the contract or a copy be filed as required by the Statute.

Therefore, such contracts are valid in New York, whether filed or not, as against creditors and all the world, except only the limited class specified in the Statute, viz: "Subsequent purchasers, pledgees "or mortgagees in good faith."

P. T. & S. Co. vs. *Schirmer*, 136 N. Y., 305.

It will also be observed that the New York Statute in reference to conditional sales differs materially from the Statutes of the same state in respect to chattel mortgages and fraudulent conveyances; e. g. an unfiled chattel mortgage is void as against *creditors*, but creditors obtain no benefits because of failure to file a contract for the conditional sale of property.

A careful examination of the record on this appeal fails to discover any "subsequent purchaser, "pledgee or mortgagee in good faith." Hence, there is no one who can question the validity of the contract under consideration, or of the conditions contained in it, nor who can claim that the sale of the moulders was absolute as to him, under the statute.

If it be claimed that the conveyance by Clara E. Kellogg to the C. E. Kellogg Company is in any manner or to any extent a factor adverse to the rights of The Berlin Machine Works, an effectual answer is found in the facts reported by the Referee, that such conveyance was made to hinder, delay

and defraud the creditors of Clara E. Kellogg, of which intent the C. E. Kellogg Company had knowledge and that it received such conveyance with like intent. (R. p. 22.)

It is only purchasers *in good faith* who can claim the benefit of the statute.

V.

The Trustee in Bankruptcy (the appellant here) is not a purchaser in good faith, and has no greater right to the machines in question than had the bankrupt.

2nd Storys Eq. Jur. Sec., 1228.
Winsor vs. *McClellan*, 2 Story, 630.
Greatman vs. *Savings Institution*, 95 U. S., 764.
Stewart vs. *Platt*, 101 U. S., 731.
Hanselt vs. *Harrison*, 105 U. S., 401-406.
Chattanooga Nat. Bank vs. *Rome Iron Co*, 102 Fed. Rep., 755.
In re. *N. Y. Economical Printing Co.*, 110 Fed. Rep., 514.

VI.

The Bankrupt Act of 1898 does not confer on a trustee in bankruptcy any greater rights than the bankrupt possessed, in respect to property obtained by the bankrupt under a conditional bill of sale.

Casey vs. *Cavaroo*, 96 U. S., 467, (law of 1867.

Chattanooga Nat. Bank vs. *Rome Iron Co.*, 102 Fed Rep., 755.

In re. *N. Y. Economical Printing Co.* 110 Fed Rep., 514.

In re. *Bozeman*, 2 Amer. Bank Rep. 809.

In re. *Garcewich*, 8 Amer. Bank Rep., 149.

In re. *McKay*, 1 Amer. Bank Rep., 292.

Section 70 (*a*) Bankruptcy Law of 1898.

The Statute Sec. 70 (*a*), Act of 1898, is as llows:

"The trustee of the estate of a bankrupt "upon his appointment and qualification, * * * "shall * * * be vested by operation of law *with "the title of the bankrupt*, as of the date he "was adjudged a bankrupt, * * * to all * * * "(5) property which prior to the filing of the "petition he could by any means have trans- "ferred, or which might have been levied upon "and sold under judicial process against him."

By the plain provision of the law, therefore, *the rustee is vested with the title of the bankrupt, he tands* in the shoes of the bankrupt, and in the ase at bar the trustee acquired only the right of he bankrupt, and nothing more.

VII.

The order appealed from should be affirmed, with costs.

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